

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,  
MARISSA BLAIR, TYLER MAGILL, APRIL  
MUNIZ, HANNAH PEARCE, MARCUS  
MARTIN, NATALIE ROMERO, CHELSEA  
ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,  
CHRISTOPHER CANTWELL, JAMES  
ALEX FIELDS, JR., VANGUARD  
AMERICA, ANDREW ANGLIN,  
MOONBASE HOLDINGS, LLC, ROBERT  
“AZZMADOR” RAY, NATHAN DAMIGO,  
ELLIOT KLINE a/k/a/ ELI MOSLEY,  
IDENTITY EVROPA, MATTHEW  
HEIMBACH, MATTHEW PARROTT a/k/a  
DAVID MATTHEW PARROTT,  
TRADITIONALIST WORKER PARTY,  
MICHAEL HILL, MICHAEL TUBBS,  
LEAGUE OF THE SOUTH, JEFF SCHOEP,  
NATIONAL SOCIALIST MOVEMENT,  
NATIONALIST FRONT, AUGUSTUS SOL  
INVICTUS, FRATERNAL ORDER OF THE  
ALT-KNIGHTS, MICHAEL “ENOCK”  
PEINOVICH, LOYAL WHITE KNIGHTS OF  
THE KU KLUX KLAN, and EAST COAST  
KNIGHTS OF THE KU KLUX KLAN a/k/a  
EAST COAST KNIGHTS OF THE TRUE  
INVISIBLE EMPIRE,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM**

**PLAINTIFFS’ MEMORANDUM IN RESPONSE TO DEFENDANT MICHAEL  
PEINOVICH’S (1) SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS  
OBJECTIONS TO MAGISTRATE JUDGE’S MARCH 22, 2018 ORDER AND  
(2) EMERGENCY MOTION TO REQUIRE REMOVAL OF INFLAMMATORY  
AND PREJUDICIAL VIDEO POSTED BY ROBERTA KAPLAN**

## INTRODUCTION

Defendant Peinovich seeks “emergency” relief to censor a short video (the “June 21 Video”) in which Ms. Kaplan describes the nature of this lawsuit and recounts Plaintiffs’ theory of the case. But there is no emergency here. Nor has Ms. Kaplan engaged in impropriety of any kind: her statements in the June 21 Video are fully consistent with the rules of attorney conduct. *See* ECF Nos. 273 & 301 (describing the rules of professional conduct applicable to this civil case).

Indeed, Mr. Peinovich’s motion offers no reason for concluding otherwise. It covers no new ground. It does not cite a single case. And it adds nothing to Mr. Peinovich’s previously-filed objections to Judge Hoppe’s March 22, 2018 decision, which rejected arguments essentially identical to those advanced here. Accordingly, this motion should be dismissed with prejudice—and Mr. Peinovich’s continued efforts to impugn Ms. Kaplan’s integrity should be disregarded.

## STANDARD OF REVIEW

To the extent Mr. Peinovich has filed this motion in further support of his objections to Judge Hoppe’s opinion, review is governed by Federal Rule of Civil Procedure 72, which permits a party to submit objections to a magistrate’s ruling to the district court. *See* Fed. R. Civ. P. 72. For non-dispositive matters, “the district court will modify or set aside the magistrate judge’s order only if it ‘is clearly erroneous or is contrary to law.’” *Wyatt v. Owens*, No. 14-CV-00492, 2016 WL 6651410, at \*1 (W.D. Va. Nov. 10, 2016) (Moon, J.) (quoting Rule 72(a)).<sup>1</sup>

To the extent Mr. Peinovich seeks an order sanctioning Ms. Kaplan, the Court may rely upon “inherent power” to sanction only upon finding a violation of “the legal process.” *Am. Sci.*

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<sup>1</sup> “A ruling is ‘clearly erroneous’ only when the totality of the record leaves the Court with ‘the definite and firm conviction that a mistake has been committed.’” *Wyatt*, 2016 WL 6651410, at \*2. A ruling is “contrary to law” when “it fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Id.*

*& Eng’g, Inc. v. Autoclear, LLC*, 606 F. Supp. 2d 617, 620 (E.D. Va. 2008) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991)). “Because of their very potency,” however, “inherent powers must be exercised with restraint and discretion,” *Chambers*, 501 U.S. at 44, and usually only after the court determines that no applicable statutes or rules “are up to the task,” *id.* at 50.

## ARGUMENT

There is nothing new here. On March 22, 2018, Judge Hoppe issued an opinion denying Mr. Peinovich’s request to sanction Ms. Kaplan. Judge Hoppe stated unequivocally that he was “not persuaded that counsel contravened any applicable statute or rule.” ECF No. 285 at 2. Since then, the parties have fully briefed Mr. Peinovich’s objections to Judge Hoppe’s decision. *See* ECF Nos. 296, 301 & 307. Although styled as a brief “in further support” of those objections, this filing offers no “support” at all. It cites no new legal authority. It does not address the statements reviewed by Judge Hoppe. And it does not even attempt to explain how the June 21 Video is improper under the legal standard articulated and carefully applied by Judge Hoppe. Thus, even disregarding Mr. Peinovich’s violation of established procedure in filing a sur-reply to his own reply brief, this motion comes nowhere close to showing that Judge Hoppe’s denial of sanctions “is clearly erroneous or is contrary to law.” *Wyatt*, 2016 WL 6651410, at \*1.

Similarly, this motion does not offer a sound—let alone urgent—basis for the Court to censor Ms. Kaplan under its inherent powers. *See Chambers*, 501 U.S. at 50. We have already described the relevant legal principles and will not reprise that discussion here. *See* ECF Nos. 273 & 301. As measured against the rules of attorney conduct, Ms. Kaplan’s statements in the June 21 Video are beyond reproach. She merely explains the factual background, legal theory, and broader context of the case. Speech like this is a standard, unremarkable occurrence in high-profile civil litigation. The fact that the producers of the video added music and images is irrelevant: no

applicable rule confines attorney speech to the written word (or to a dry recitation of facts against a drab background). By the same token, no applicable rule prohibits attorneys from making statements suggesting that their “client’s claims are 100% valid.” Br. at 3. Despite Mr. Peinovich’s adamant insistence otherwise, lawyers in civil matters are not forbidden from articulating their view of what happened or explaining why the law supports their position.<sup>2</sup>

Lacking any basis for censoring Ms. Kaplan, Mr. Peinovich advances two speculative arguments. First, he asserts that the June 21 Video is prejudicing the jury pool in the District. Remarkably, he offers no evidence *at all* to support that crucial claim. Moreover, he admits that any potential for case-specific bias can be cured by striking prospective jurors where appropriate. *Id.* at 6. Second, Mr. Peinovich challenges Ms. Kaplan’s remark in the June 21 Video regarding a meeting at Trump Tower. *Id.* at 6-7. But this particular statement merely repeats an allegation set forth in the First Amended Complaint, ECF No. 175 ¶ 64, and fully supported by all available facts.

At bottom, notwithstanding the existence of rules that speak to this very situation (none of which has been violated), Mr. Peinovich asks the Court to exercise its inherent power—on an emergency basis—to restrain constitutionally protected attorney speech. That is an extraordinary request and must be supported by extraordinary proof. Instead, Mr. Peinovich points only to a brief video in which Ms. Kaplan describes Plaintiffs’ allegations. He offers no evidence of prejudice, no reason to think that any imaginable prejudice is incurable, and no basis for his

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<sup>2</sup> Mr. Peinovich relies solely on New York and ABA Ethical Rule 3.6. Br. at 2. Although Ms. Kaplan has complied with those rules, they do not apply here. *See* ECF No. 301 at 4-5. This likely explains why Judge Hoppe neither cited nor applied any of the non-Virginia rules invoked by Mr. Peinovich. And there can be no doubt that Ms. Kaplan’s statements are *fully* permissible under Virginia law—as Mr. Peinovich has all but conceded.

insulting claims about Ms. Kaplan's motives. Given these substantial errors in his position, Mr. Peinovich cannot satisfy the requirements necessary to obtain the relief he has requested.

### CONCLUSION

For the foregoing reasons, Defendant Peinovich's motion should be denied.

Dated: June 28, 2018

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## CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2018, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I further hereby certify that on June 28, 2018, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

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